

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Review of Foreign Ownership Policies for) GN Docket No. 15-236
Broadcast, Common Carrier and Aeronautical Radio)
Licensees under Section 310(b)(4) of the)
Communications Act of 1934, as Amended)

ORDER ON RECONSIDERATION

Adopted: June 8, 2017

Released: June 8, 2017

By the Acting Chief, International Bureau; Chief, Media Bureau:

I. INTRODUCTION

1. We dismiss the petition for reconsideration (Petition) of the *2016 Foreign Ownership Report and Order*¹ filed by William J. Kirsch (Petitioner)² as it does not meet the requirements of Section 1.429 of the Commission’s rules,³ and “plainly do[es] not warrant consideration by the Commission.”⁴ More specifically, the Petition fails to state with particularity the respects in which Petitioner believes the Commission’s action in the *2016 Foreign Ownership Report and Order* should be changed; relies on arguments that the Commission fully considered and rejected; relates to matters outside the scope of that order; and fails to identify any material error, omission, or reason warranting reconsideration.⁵ We take this action pursuant to delegated authority under Section 1.429(l) of the Commission’s rules.⁶

II. BACKGROUND

2. In the *2015 Foreign Ownership NPRM*, the Commission proposed to extend the streamlined foreign ownership procedures applicable to common carrier licensees to broadcast licensees, with certain exceptions and modifications specified by the Commission.⁷ Petitioner participated, along with other parties, in the proceeding and asserted that taking the proposed action would constitute a

¹ *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272 (2016) (*2016 Foreign Ownership Report and Order*).

² Petition for Reconsideration of William J. Kirsch, GN Docket No. 15-236 (filed Oct. 5, 2016) (Kirsch Petition).

³ 47 CFR § 1.429.

⁴ 47 CFR § 1.429(l).

⁵ 47 CFR § 1.429(l)(1), (3), (4), (5).

⁶ 47 CFR § 1.429(l).

⁷ *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket 15-236, Notice of Proposed Rulemaking, 30 FCC Rcd 11830, 11834, para. 8 (2015) (*2015 Foreign Ownership NPRM*) (“Specifically, we propose to incorporate broadcast licensees into the Commission’s rules that apply to petitions filed under section 310(b)(4) of the Act.”).

“unilateral trade concession for trade in broadcasting services,” and, as such, would be contrary to the public interest.⁸

3. In the *2016 Foreign Ownership Report and Order*, the Commission modified the foreign ownership filing and review process for broadcast licensees by extending the streamlined procedures developed for foreign ownership reviews for common carrier and certain aeronautical licensees under Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”),⁹ to the broadcast context with certain limited exceptions.¹⁰ The Commission also reformed the methodology used by both common carrier and broadcast licensees that are, or are controlled by, U.S. public companies to identify and determine the citizenship of their shareholders for purposes of applying the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act, respectively.¹¹ Because its focus was on the procedures for seeking approval of foreign ownership under these provisions of the Act, the order did not propose or adopt any changes to the requirement that broadcast applicants demonstrate their qualifications, “including with respect to foreign ownership.”¹²

4. Petitioner seeks reconsideration of the *2016 Foreign Ownership Report and Order*, asserting that the Commission did not address the concerns Petitioner raised earlier in the proceeding.¹³ No oppositions to the Petition were filed.¹⁴

III. DISCUSSION

5. Pursuant to Section 1.429 of the Commission’s rules, any interested party may petition for reconsideration of a final action in a rulemaking proceeding.¹⁵ A petition for reconsideration must state with particularity the respects in which the petitioner believes the action taken should be changed.¹⁶

⁸ See GN Docket 15-236, William J. Kirsch Reply 1 and Reply 2. Because Petitioner’s “Comments” and “Reply Comments” were uploaded in ECFS during the period specified for filing replies in the proceeding, we refer to them here as William J. Kirsch Reply 1 and Reply 2, as the Commission did in the *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11281, para. 13 n.38.

⁹ 47 U.S.C. § 310(b)(4).

¹⁰ *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11273, para 1. See also *id.*, 31 FCC Rcd at 11279-80, para. 11 (adopting “rules that incorporate the same streamlined procedures used for common carrier licensees” with respect to Section 310(b)(4) petitions).

¹¹ *Id.* at 11280, para. 11.

¹² *Id.* at 11281, para. 13 n.38.

¹³ Kirsch Petition at 1.

¹⁴ Petitioner, however, sent “Reply Comments” via email to a number of recipients, including members of the Commission. We are treating these “Reply Comments” as an *ex parte* submission for the purpose of enabling full consideration of the record. See Letter from William J. Kirsch to Marlene H. Dortch, Secretary, FCC, et al., GN Docket No. 15-236 (filed Mar. 2, 2017) (Kirsch *Ex Parte*). However, we note that Petitioner’s “Reply Comments” to the Petition were not properly filed in accordance with the Commission’s rules. See 47 CFR § 1.429(d), (f), (g), (h), (l)(7). As no oppositions to the Petition were filed, there were no matters raised to which Petitioner could file reply comments to the Petition. Petitioner may not file reply comments where no oppositions to the Petition have been submitted. To the extent that Petitioner seeks to submit the “Reply Comments” as a supplement to the Petition, the “Reply Comments” were untimely submitted. Moreover, Petitioner sent the “Reply Comments” via email to a number of recipients, including members of the Commission. See Email from William J. Kirsch to Marlene H. Dortch, Secretary, FCC, et al. (sent Feb. 17, 2017, 11:24 pm). Petitioner did not file the “Reply Comments” in the Commission’s Electronic Comment Filing System (ECFS), nor has Commission staff received the “Reply Comments” by mail. Petitioner’s “Reply Comments” were uploaded into ECFS by Commission staff to enable full consideration of the record.

¹⁵ 47 CFR § 1.429(a).

¹⁶ 47 CFR § 1.429(c).

Reconsideration may be denied where a petition fails to state with particularity the respects in which petitioner believes the action taken should be changed; where a petition relies on arguments that have been fully considered and rejected by the Commission within the same proceeding; where a petition relates to matters outside the scope of the order for which reconsideration is sought; or where a petition fails to identify any material error, omission, or reason warranting reconsideration.¹⁷ As discussed below, the Petition does not meet the requirements of Section 1.429 of the Commission's rules.

6. As an initial matter, we find that the Petition fails to state with particularity the respects in which Petitioner believes the Commission's action in the *2016 Foreign Ownership Report and Order* should be changed.¹⁸ The Petition consists of generalized claims and requests, some but not all of which appear to relate to broadcasting, and offers no evidence or analysis to support these assertions, most notably why the Executive Branch review process is inadequate to address Petitioner's apparent concerns about "reciprocity, state-owned enterprise and foreign corrupt practices."¹⁹ Indeed, the Petition quotes principally from the separate statements of the Commissioners in the *2016 Foreign Ownership Report and Order*, and not from the order itself.

7. To the extent that the Petition's assertions can be construed as requesting that the Commission adopt a reciprocity standard in the broadcast context, the Petition does not explain with any specificity how the Commission would make changes to implement this standard. For example, the Petition fails to explain how the Commission would determine whether other countries provide "reciprocity" or whether such a proposal would be consistent with U.S. international obligations and be within the Commission's authority to implement. Nor does it address how the *2016 Foreign Ownership Report and Order* serves to change existing Commission policy and precedent with respect to the agency's evaluation of foreign ownership of broadcast licensees in this respect, which requires the Commission to "assess[], in each particular case, whether the foreign interests presented for approval by the licensee are in the public interest" consistent with Section 310(b)(4), and "accords deference" to the expertise of the relevant Executive Branch agencies relating to "trade policy" as well as national security, law enforcement, and foreign policy matters.²⁰ We thus find that, to the extent that the Petition expresses disagreement with the Commission's decisions in the *2016 Foreign Ownership Report and Order*, the Petition does not identify particular procedures adopted in the *2016 Foreign Ownership Report and Order* that Petitioner believes should be changed or explain with specificity how Petitioner believes the Commission should implement any such changes.²¹

8. Moreover, we find that the Petition raises no relevant new arguments and merely echoes Petitioner's earlier disagreement with the Commission's proposed action.²² The Petition repeats earlier arguments raised by Petitioner that taking the proposed action would raise trade concerns contrary to the

¹⁷ 47 CFR § 1.429(l)(1), (3), (4), (5).

¹⁸ 47 CFR § 1.429(c), (l)(4).

¹⁹ Kirsch Petition at 1.

²⁰ *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11277, para. 6. See also *id.* at 11278, para. 8 (describing prior Commission declaratory ruling regarding foreign ownership of broadcast licensees to require "fact-specific, individualized case-by-case review of each application or petition for declaratory ruling involving broadcast stations," and viewing application of the Section 310(b)(4) benchmark as "only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances of each case").

²¹ Petitioner made similar arguments earlier in the proceeding and offered no substantive explanation as to how Petitioner would have the Commission modify the regulatory framework that it proposed in the *2015 Foreign Ownership NPRM* and that it ultimately adopted in the proceeding. See William J. Kirsch Reply 1 and Reply 2. The Petition suffers from the same defect.

²² 47 CFR § 1.429(l)(3).

public interest,²³ including concerns related to reciprocity, state-owned enterprises, and other matters involving the Trade Act of 2015.²⁴ The Petition asserts, as Petitioner similarly did earlier in the proceeding, that “the United States can and must address” issues of protectionism and mercantilism “by obtaining market access, national treatment, most favored nation and other trade concessions.”²⁵ In this regard, we reject Petitioner’s assertion that the *2016 Foreign Ownership Report and Order* did not address concerns raised by Petitioner earlier in the proceeding.²⁶ As noted above, in the *2016 Foreign Ownership Report and Order*, the Commission addressed this issue, finding that the relevant Executive Branch agencies will continue to review Section 310(b)(4) petitions for declaratory ruling, where appropriate, and will advise the Commission of any national security, law enforcement, foreign policy, or trade policy concerns.²⁷ The Commission found that this review process will continue to address concerns raised by a particular foreign investment in the broadcasting context, and specifically Petitioner’s concern about a “unilateral trade concession.”²⁸ In extending the procedures applicable to common carrier licensees to broadcast licensees, the Commission concluded that the streamlined common carrier procedures for reviewing foreign ownership petitions create an efficient process that benefits filers without harm to the public.²⁹ These changes in procedure were not intended to have any substantive effect on Executive Branch agency review of these petitions, and we have no reason to believe that the Commission’s action in the *2016 Foreign Ownership Report and Order* will in fact have any such effect. And Petitioner has suggested nothing that indicates otherwise. In sum, we find that the Commission fully considered Petitioner’s earlier arguments and explained in the *2016 Foreign Ownership Report and Order* the reasons for the Commission’s decisions and dismiss the Petition on that basis.³⁰ Moreover, to the extent they can be discerned, Petitioner’s real concerns appear to be about the substantive evaluation of foreign ownership in broadcasting as it may relate to trade policy. As noted above, the order under reconsideration here streamlined the procedures for seeking such an evaluation, and did not address the substantive criteria for that evaluation. The Petition thus also warrants dismissal for relating to “matters outside the scope of the order.”³¹

²³ See, e.g., *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11281, n.38; Kirsch Petition at 1-2; William J. Kirsch Reply 1 and Reply 2.

²⁴ Kirsch Petition at 1 (“[T]he FCC Report Order and Order [sic] opens Pandora’s Box on U.S. broadcasting by affirming and expanding a process that generates and complicates longstanding problems as a result of unwise interference regarding reciprocity, state-owned enterprises and foreign corrupt practices addressed by the Trade Act of 2015.”); William J. Kirsch Reply 1 (“The proposals amount to a unilateral concession . . . This unilateral concession would also deny U.S. broadcasters an important opportunity provided by the Trade Act of 2015 to expand their operations abroad.”); William J. Kirsch Reply 1 (“Therefore, rather than the proposed approach, U.S. broadcasters that are interested in greater foreign ownership should participate in the trade advisory committees of the U.S. trade and other agencies to obtain trade agreements under the Trade Act of 2015 that provide for the ‘same footing as regards privileges’ for U.S. broadcasters abroad.”). See also *infra* note 25.

²⁵ Kirsch Petition at 1-2. Earlier in the proceeding, Petitioner filed reply comments claiming that the proposed action “denies the existence of an Most Favored Nation (MFN) free rider problem for common carrier and broadcast services,” and raising concerns about “the absence of anti-trust or trade oversight” of foreign state-owned enterprises. William J. Kirsch Reply 2 at 1, 4. See also *supra* note 24.

²⁶ Kirsch Petition at 1.

²⁷ *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11281, para. 13 n.38.

²⁸ *Id.*

²⁹ *Id.* at 11282, para. 15. The Commission also noted that this process helps ensure that the Commission is able to fulfill its obligations under Section 310(b) with respect to foreign ownership, while coordinating applications and petitions with the relevant Executive Branch agencies, as needed. *Id.*

³⁰ 47 CFR § 1.429(l)(3).

³¹ 47 CFR § 1.429(l)(5).

9. The Petition also fails to demonstrate any material error, omission, or reason warranting reconsideration of the *2016 Foreign Ownership Report and Order*.³² The Petition does not identify any basis in the statute or relevant authority that would prohibit the Commission from adopting streamlined procedures in the *2016 Foreign Ownership Report and Order*. As discussed, Petitioner's generalized claims and requests throughout the Petition are unsupported by evidence or analysis and do not warrant reconsideration. To the extent that the Petition repeats earlier arguments that the Commission fully considered and rejected, and raises no relevant new arguments that warrant consideration, we find that the Petition also fails to identify any material error, omission, or reason warranting reconsideration of the *2016 Foreign Ownership Report and Order*.

10. Finally, we note that Petitioner's *ex parte* submission³³ does not cure the Petition's deficiencies. Petitioner's *ex parte* submission does not state with particularity the respects in which Petitioner believes the Commission's action in the *2016 Foreign Ownership Report and Order* should be changed; relies on arguments that the Commission fully considered and rejected in the *2016 Foreign Ownership Report and Order*; and fails to identify any material error, omission, or reason warranting reconsideration.³⁴ Accordingly, for the reasons stated above, we dismiss the Petition pursuant to Section 1.429 of the Commission's rules.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Sections 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155(c) and 405, and Sections 0.51, 0.61, 0.261, 0.283, 1.429(c), and 1.429(l) of the Commission's rules, 47 CFR §§ 0.51, 0.61, 0.261, 0.283, 1.429(c), 1.429(l), the Petition for Reconsideration filed by William J. Kirsch in this proceeding IS DISMISSED.

12. IT IS FURTHER ORDERED that, pursuant to Section 1.103 of the Commission's rules, 47 CFR § 1.103, this Order IS EFFECTIVE upon release. Applications for review under Section 1.115 of the Commission's rules, 47 CFR § 1.115, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Sullivan
Acting Chief, International Bureau

Michelle M. Carey
Chief, Media Bureau

³² 47 CFR § 1.429(l)(1).

³³ See *supra* note 14.

³⁴ 47 CFR § 1.429(l)(1), (3), (4). To the extent Petitioner raises issues related to other matters he has pending before the Commission, we do not address those matters in this decision.